

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| THE NEW YORK TIMES COMPANY | : | |
| and BENJAMIN PROTESS, | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| - against - | : | <u>COMPLAINT</u> |
| DEPARTMENT OF TRANSPORTATION, | : | |
| | : | |
| Defendant. | : | |
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Plaintiffs THE NEW YORK TIMES COMPANY and BENJAMIN PROTESS, by their undersigned attorney, allege for their Complaint:

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to obtain an order for the production of agency records from Defendant Department of Transportation (“DOT”) in response to a FOIA request properly made by Plaintiffs.
2. The FOIA requests at issue in this action seek records relating to the potential links between President Trump’s business interests and DOT involvement in railroad projects in Florida, California and Nevada.

PARTIES

3. Plaintiff The New York Times Company publishes *The New York Times* newspaper and www.nytimes.com. The New York Times Company is headquartered in this judicial district at 620 Eighth Avenue, in Manhattan.

4. Plaintiff Benjamin Protess is a reporter for *The New York Times* and an employee of The New York Times Company.

5. Defendant DOT is an agency of the federal government that has possession and control of the records that Plaintiffs seek.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action, pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

7. Venue is premised on the place of business of Plaintiffs and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

8. Plaintiffs have exhausted all administrative remedies available. The DOT has failed to make an initial determination with respect to Plaintiffs' request within the timeframe set by FOIA, and Plaintiffs therefore are deemed to have exhausted all administrative remedies, pursuant to 5 U.S.C. § 552(a)(6)(C).

FACTS

9. On March 31, 2017, The Times submitted a FOIA request to the DOT (FY2017-173) seeking "(1) Any correspondence, call logs or meeting minutes referencing communications between the Executive Office of the President and DOT officials (any official from any department) pertaining to a proposal for a high-speed train between southern California and Las Vegas, a project known as XpressWest. (2) Any correspondence, call logs or meeting minutes referencing communication between the Executive Office of the President and DOT officials (any official from any department) pertaining to a proposal for a passenger railroad between Miami and Orlando, a project known as All Aboard Florida and/or Brightline."

10. On August 22, 2017, Plaintiff Benjamin Protesse emailed the DOT to ask for an update to his FOIA request. DOT responded on August 22, 2017 that it was still searching for responsive records.

11. Plaintiff Benjamin Protesse emailed the DOT on September 1, 2017 and September 11, 2017 asking the agency to provide a timeline for completion of the request. Plaintiff received no response from the DOT.

12. The DOT has failed to issue a response to the request within 20 business days, as required under FOIA.

COUNT I

13. Plaintiffs repeat, reallege, and reincorporate the allegations in the foregoing paragraphs as though fully set forth herein.

14. Defendant DOT is subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any materials as to which it is claiming an exemption.

15. The DOT has failed to act on Plaintiffs' request within the 20 business days required by FOIA. *See* 5 U.S.C. § 552(a)(6)(A)(i). Accordingly, Plaintiffs are deemed to have exhausted their administrative remedies under FOIA.

16. The DOT has no lawful basis for declining to release the records requested by Plaintiffs under FOIA.

17. Accordingly, Plaintiffs are entitled to an order compelling the DOT to produce records responsive to their FOIA request.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

18. Declare that the documents sought by their FOIA request, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;

19. Order the DOT to provide the requested documents to Plaintiffs within 20 business days of the Court's order;

20. Award Plaintiffs the costs of this proceeding, including reasonable attorneys' fees, as expressly permitted by FOIA; and

21. Grant Plaintiffs such other and further relief as this Court deems just and proper.

Dated: New York, NY
October 2, 2017

_____/s/_____
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